

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JERRY E. ARNOLD,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 07cv836 BTM
99cr635 BTM

**ORDER DENYING PETITIONER'S
MOTION TO CLARIFY ORDER OF
SENTENCE**

On April 6, 2007, Petitioner filed a motion to clarify this Court's order sentencing him to 110 months of imprisonment. Petitioner contends that his sentence should run concurrent with his prior State of California prison sentence of 16 months. He argues that the state court sentence specifically reflected this understanding and that the sentencing record reflects this Court's acknowledgment of the state court's wishes.

The portion of the transcript of Petitioner's sentencing that he submitted along with his motion did not appear to address this Court's determination as to whether the two sentences should run concurrently. Accordingly, on May 14, 2007, this Court requested Respondent to file a response to Petitioner's motion, which would include a transcript of the sentencing proceedings and address any statements made by the Court regarding this issue of concurrent sentences. Respondent failed to file anything in response to this Court's order. The Court, therefore, obtained a copy of the full transcript of the Petitioner's sentencing.

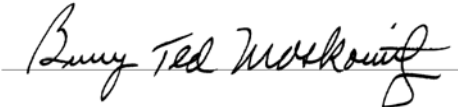
A full review of the sentencing proceedings reveals that this Court did not indicate any

1 desire to have Petitioner's federal sentence run concurrent with his state sentence. The only
2 mention of concurrent sentences appears on page 2546 of the transcript of the October 25,
3 1999 sentencing, which was the page previously submitted by Petitioner. In discussing
4 Petitioner's prior conviction in state court and the resulting 16-month sentence, the Court
5 asked if the State of California had made those 16 months concurrent to any federal
6 sentence. Petitioner's counsel responded that it had.

7 At no time in the sentencing proceedings did this Court order that the two sentences
8 should run concurrently. This Court has reviewed the abstract of judgment form relating to
9 his relevant state court conviction, and has filed this document as an attachment to this
10 order. The abstract makes no indication that the 16-month sentence is to run concurrent to
11 any federal sentence. Finally, it appears that Petitioner has been in continuous federal
12 custody since June 1999 and, when he completes his federal sentence, if he is returned to
13 the State of California to serve any remainder of his state sentence, he is free to make an
14 application to the state court for such relief. However, Petitioner has presented no reason
15 for disturbing this Court's previous sentence of 110 months of federal imprisonment.
16 Accordingly, Petitioner's motion is **DENIED**.

17
18 **IT IS SO ORDERED.**

19 DATED: July 13, 2007

20 
21 Hon. Barry Ted Moskowitz
22 United States District Judge
23
24
25
26
27
28

Received at: 11:23AM, 7/11/2007

Jul 11 2007 10:41

P.02

ABSTRACT OF JUDGMENT - PRISON COMMITMENT **SINGLE OR CONCURRENT COUNT FORM**

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO		BRANCH OR JUDICIAL DISTRICT EL CAJON	
DEFENDANT JERRY EDWARD ARNOLD		AMENDED ABSTRACT <input type="checkbox"/>	
DATE OF HEARING (MO, DAY, YR) 05-13-99		DEPT. NO. WJM	
JUDGE WILLIAM J. MCGRATH		CLERK J. NEAL	
REPORTER T. NIELSEN 9143		COUNSEL FOR PEOPLE M. PRZYTULSKI	
COUNSEL FOR DEFENDANT D. LARKIN		PROBATION NO. OR PROBATION OFFICER A 714 874	

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONY (OR ALTERNATE FELONY/MISDEMEANOR):

COUNT	CODE	SECTION NUMBER	CRIME	YEAR CHRG. COMPLETED	DATE OF CONVICTION				CONVICTED BY				TIME IMPOSED	
					MO	DAY	YEAR	JURY TRIAL	GUANT. TRIAL	PLEA	TECH. CL. ALA	YEARS	MONTHS	
01	HS	11377(a)	POSS CONTROLLED SUBST.	97	03	22	99				X	L	1	4

2. ENHANCEMENTS charged and found true **TIED TO SPECIFIC COUNTS** (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.:
 For each count list enhancements horizontally. Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385.
 Add up time for enhancements on each line and enter time total in right-hand column.

Count	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total

3. ENHANCEMENTS charged and found true **FOR PRIOR CONVICTIONS OR PRIOR PRISON TERMS** (mainly § 667-series) and **OTHER** (e.g., § 667.5(b) for 2 or more prior violent felonies):
 List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., if 2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or "S" for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time for these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in § 667.5(b).

Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Enhancement	Yrs or "S"	Total

4. OTHER ORDERS:

REST. FINE OF \$1000 FORTHWITH PER PC2085.5.
 REST. FINE OF \$1000 PER PC1202.45 SUSP. UNLESS PAROLE IS REVOKED.

5. TIME STAYED § 1170.1(a) (DOUBLE BASE LIMIT):

TOTAL TERM IMPOSED:		
1	4	

6. THIS SENTENCE IS TO RUN CONCURRENT WITH ANY PRIOR UNCOMPLETED SENTENCE(S):

7. EXECUTION OF SENTENCE IMPOSED:

A. <input checked="" type="checkbox"/> AT INITIAL SENTENCING HEARING.	B. <input type="checkbox"/> AT RESENTENCING PURSUANT TO DECISION ON APPEAL.	C. <input type="checkbox"/> AFTER REVOCATION OF PROBATION.	D. <input type="checkbox"/> AT RESENTENCING PURSUANT TO RECALL OF COMMITMENT (PC § 1170(d)).	E. <input type="checkbox"/> OTHER _____
8. DATE OF SENTENCE PRONOUNCED (MO, DAY, YR) 05-13-99	CREDIT FOR TIME SPENT IN CUSTODY 31	TOTAL DAYS INCLUDING: 21	ACTUAL LOCAL TIME 21	LOCAL CONDUCT CREDITS 10
STATE INSTITUTIONS <input type="checkbox"/> DMH <input type="checkbox"/> CDC				

10. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

<input checked="" type="checkbox"/> FORTHWITH	INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION/GUARDANCE CENTER LOCATED AT:	<input type="checkbox"/> CALIF. INSTITUTION FOR WOMEN - FRONTERA	<input type="checkbox"/> CALIF. MEDICAL FACILITY - VACAVILLE	<input type="checkbox"/> CALIF. INSTITUTION FOR MEN - CHINO	<input type="checkbox"/> DEUEL YOC. INST.
<input type="checkbox"/> AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS		<input type="checkbox"/> SAN GUENTIN			
<input checked="" type="checkbox"/> OTHER (SPECIFY): R. J. DONOVAN CORRECTIONAL FACILITY					

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

N. PEABODY *N. Peabody*

DATE

05-14-99

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213 for determinate sentences under Penal Code § 1170. Attachments may be used but must be referred to in this document.

ABSTRACT OF JUDGMENT - COMMITMENT **SINGLE OR CONCURRENT COUNT FORM**

(Not to be used for Multiple Count Convictions nor Consecutive Sentences)

FORM DSL 290.1

Form Adopted by the
Judicial Council of California
Effective April 1, 1992